IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

LA.App..No. 888 of 2000(B)

LAR.63/1997 of III ADDL.SUB COURT, ERNAKULAM
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APPELLANT: RESPONDENT

GOVERNMENT OF KERALA

BY GOVERNMENT PLEADER SMT. K.R.DEEPA
ADVOCATE GENERAL

RESPONDENT: CLAIMANT

SOSAMMA, W/O. MATHAI,
KAVANA THOTTATHIL,
OORAMANA, MEMMURY VILLAGE.

BY ADV. SRI.GEORGE KURUVILLA
SRI.P.V.BABY

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007 ALONG WITH LAA 939/2000 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A.Nos.888, 939, 941 & 956 of 2000 and L.A.A.No.262 of 2004

Dated: September 19, 2007

JUDGMENT

Kurian Joseph, J.

These appeals arise out of a common judgment in LAR Nos.21, 59, 63, 64 and 97 of 1997 on the file of the IIIrd Addl. Sub Court, Ernakulam. The acquisition is for the purpose of an approach road to Peruvammoozhi bridge. Sec.4(1) notification was published on 15.12.1993. The award was passed on 7.8.1995. The land acquisition officer awarded land value at the rate of Rs.14,475/- per Are. The Reference Court, on the basis of the evidence adduced by Aws.1 to 6 and mainly placing reliance on Ext. A2 document executed on 8.10.1993, fixed the land value reducing the value proportionate to the proximity to N.H.49. The acquired properties lie as a contiguous plot. Ext. A2 is a property having national highway frontage and lying at a distance of 1 km. from Kolencherry town and 1.5 kms. from the acquired lands. The acquired lands are at a distance of 2.5 kms. from Kolencherry town. Though the Reference Court was also of the view that the land value of Ext.A2 cannot be granted to the acquired properties, taking note of the fact that the acquired properties are also situated on the side of the national highway - only two items are having direct road frontage to the national highway - and that in the absence of any contra evidence, the court was of the opinion that Ext. A2 can be

made the basis for fixing the land value. In view of the distance from the town, 15% of the value was reduced from the value of Ext.A2. Thus, the value in respect of properties covered by LAR Nos.21/1997 and 97/1997 was fixed by reducing 15% of the value of Ext.A2 document. In the rest of the cases, proportionate to the proximity to the national highway, further reduction was made. It can be seen from the reports of the commissioner that the properties are situated in an important locality, and though some of the items do not have national highway frontage, they are situated on the side of a PWD Road.

2. Though the learned Government Pleader strenuously contended that the Reference Court should not have made Ext.A2 as the basis for fixation of land value and the value awarded by the land acquisition officer should have been found as sufficient, we are afraid that this contention cannot be appreciated. It is to be noted that there is no evidence at all produced before the Reference Court. On the contrary, on the side of the claimants, they have produced Ext.A2 and AWs.1 to 6 were examined also. There is also the report of the commissioner. In the above facts and circumstances of the cases, we are of the view that the value fixed by the Reference Court in these cases is just and proper.

3. In L.A.A.No.939/2000, the claimant has filed cross-objection No.43/2003. Mainly two contentions are taken, one regarding the fixation of land value and the other, regarding the valuation of the building.

According to the claimant, since the acquired property was being put to use for the purpose of a hotel and residence, the land value need to have been reduced, if at all necessary, only upto 15% from that of Ext.A2. The extent involved is only 1.57 Ares. We do not think it necessary to disturb the fixation already made by the Reference Court since on the basis of evidence available in the case in which proportionate reduction from that of Ext.A2 has been made by the Reference Court. However, as far as the value of the building is concerned, despite the evidence available in the case, the report of the advocate commissioner who prepared the valuation report with the assistance of the expert commissioner appointed by the Munsiff's Court, Perumbavoor in O.S.No.449/1995, the Reference Court has reduced the value by 50%. According to the Reference Court the claimant failed to produce authenticated materials to prove the prevailing market price of the materials used in the building and that the opinion of the expert engineer regarding the market price was not satisfactory. On going through the report of the expert commissioner, we find that the assessment is made as per the rates prevailing in the locality. Taking note of the fact that the building is only 7 years old, that the same was being used for residence as well as business, and since no shifting charge as such is given also, though entitled, we are of the view that reduction only upto 25% alone would have been sufficient to meet the ends of justice.

4. Accordingly, we allow the cross-objection partly. The cross-

objector - the claimant in LAR 64/1997 - shall be entitled to 75% of the value fixed by the expert commissioner in O.S.No.449/1995 of the Munsiff's Court, Perumbavoor, for the building.

5. We make it clear that in case the claimants have not been granted the statutory benefits including interest on solatium, being a settled position, they shall be entitled to all the eligible benefits. The claimant in LAR 64/1997 shall be entitled to 75% of the value fixed by the expert commissioner for the building. Since sec.23(1A) benefit is available only till the earlier date between the date of taking possession and the date of the award, we hold that the claimants in these cases will be entitled to sec.23(1A) benefit only till the date of the award and not till the date of taking possession.

The judgment and decree under appeal will stand modified to the above extent. All the appeals and cross-objection are partly allowed as above.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A.Nos.888, 939, 941 & 956

of 2000 and L.A.A.No.262 of 2004

JUDGMENT

19.9.2007